UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1146
22 April 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1146th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-15542 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Thirteenth periodic report of Spain (CERD/C/263/Add.5) (continued)

1. At the invitation of the Chairman, the members of the Spanish delegation resumed their seats at the Committee table.

2. Mr. AHMADU said that the countries of sub-Saharan Africa, and in particular Nigeria, whose population accounted for one third of that region's population, seemed to be particularly discriminated against when it came to obtaining Spanish visas. He asked why the countries whose citizens no longer required a visa to visit Spain included only one country from sub-Saharan Africa. He also requested that the figures given in Spain's next report should distinguish between Moroccans and other Africans.

3. Mrs. VEVIA ROMERO (Spain) said that her delegation would reply to the various questions raised by the members of the Committee subject by subject. The desired statistics and information, which had only an indirect bearing on racial discrimination, would be sent to the Committee as soon as possible. The new provisions adopted by Spain in 1995 filled a number of gaps identified by the Committee. Where links between the State and the Autonomous Communities, and the transfer of responsibility were concerned, she would provide the Committee with detailed information as soon as she had received it from the competent ministries.

4. Regarding limitation of the powers of the Autonomous Communities, she emphasized that article 148 of the Constitution defined the responsibilities of each Autonomous Community, which could subsequently be expanded, albeit within the limits set by article 149: the same article conferred on the State exclusive competence for questions of nationality, immigration, emigration, aliens and the right of asylum. The competent ministries could invite the government agencies of the various Autonomous Communities to participate in sectoral conferences and to conclude cooperation agreements on the provision of various services in the fields of education and health.

5. Monitoring of the activities of the agencies of the Autonomous Communities would be the responsibility of the Constitutional Court where matters of conformity with the Constitution were concerned, of the administrative courts in cases of administrative disputes and of the Court of Audit where economic and budgetary matters were concerned.

6. Mr. PORRAS MUÑOZ (Spain), replying to the questions about the Gypsy community, pointed out that, with the aim of preserving the right to privacy, the Constitution did not allow official censuses to record racial or ethnic identity. In any case, what really mattered was not so much the number of Gypsies as their economic circumstances, which had been the subject of sufficient studies and analyses to enable the problems posed to be addressed.

The Gypsies themselves did not favour a census of their community. He informed Mr. Lechuga Hevia that there was no contradiction between article 14 of the Constitution, which proclaimed the equality of all before the law without distinction, and article 9 of the Constitution under which the authorities were responsible for eliminating any obstacles to the effective enjoyment of fundamental rights. Regarding the distribution of Gypsies throughout Spain, he said that in 1993, of the approximately 406,168 Gypsies in Spain, 38.67 per cent had been in Andalusia, 8.76 per cent in Madrid, 7.84 per cent in Catalonia, 7.86 per cent in Valencia and 4.97 per cent in the region of Castilla La Mancha. There seemed to be a tendency for Gypsies to settle around large towns.

7. Follow-up and evaluation of the Gypsy Development Plan, on which his delegation would provide the Committee with a number of documents, were indeed extremely important and were the responsibility of a special follow-up committee comprising representatives of the central administration, of the administrations of the Autonomous Communities and of the local administrations, as well as a number of specialists. There was also a parallel consultative committee comprising representatives of the Government and leaders of the most representative Gypsy associations. During the period 1989-1995 a total of 8.259 million pesetas had been allocated to the plan, thus making it possible to fund more than 1,130 programmes. Some results had already been achieved. For example, specific policies and measures had been adopted in support of the Gypsies by many public and private bodies. Employment opportunities for Gypsies had improved. Major progress had been made in school attendance, especially among young children, and truancy and dropping out were declining among the Gypsy population. Access by Gypsies to the public health system had improved and special measures had been adopted for Gypsy women. Substantial efforts had been made to enable Gypsies to obtain proper housing and to facilitate their integration into society. Despite certain difficulties, Gypsies were participating more in matters of direct concern to them and in running programmes intended for them. A positive image of Gypsies was gradually developing and knowledge of their values and culture was becoming more widespread.

8. Remedial teaching was intended for all children who were in need of it, both Gypsies and non-Gypsies alike. Although more and more pupils requested such teaching, the proportion of Gypsies was in fact declining. The Ministry of Education and Science would shortly issue a decree providing for measures to offset educational inequalities deriving from economic, social, cultural, ethnic or geographical factors. It must be clearly understood that affirmative action in support of Gypsies was justified solely by the de facto discrimination they suffered in certain areas.

9. The word "agitanado" and other terms based on the word "Gypsy" had not been deleted from the dictionary, and his delegation took note of the concern expressed on that point by the Country Rapporteur, which it shared. It would see what steps it could take to persuade the Royal Academy to delete those words from the dictionary or to provide a different interpretation of them. However, the essential problem derived not from the existence of such words but from the manner in which they were used. Efforts to solve the problem

were of two kinds: first, the avoidance of any pejorative reference to Gypsies. In November 1994 the Ministry of Social Affairs had signed with the Autonomous Communities an agreement designed to protect the image of ethnic minorities in the media, which were invited to conform to the principles set out in the agreement. It was still too early to assess the results. In addition, the Ministry of Social Affairs subsidized a number of programmes and projects relating to the Gypsy population, whose aim was to identify any racist allusions to Gypsies in school textbooks or, on the other hand, to familiarize people with their culture.

10. The second component of efforts to combat racial discrimination consisted of anti-racist campaigns. The campaign entitled "Democracy is equality" had had a great impact; the campaign entitled "Youth against intolerance" had received support from numerous Gypsy organizations; and the European Youth Campaign against racism, xenophobia, anti-Semitism and intolerance had been launched in conjunction with the Council of Europe. The Committee would receive any further information it requested on those campaigns.

11. The rehousing plan described in paragraphs 63 to 70 of the report had given rise to a degree of perfectly understandable concern. The Committee must appreciate that the brief interruption of its implementation in 1993 had provided an opportunity to take stock and to redefine the methods and aims of the Consorcio de Población Marginada (Underprivileged Population Consortium), and that the new local and autonomous governments formed after the October 1995 elections had concluded with the Consortium, a new agreement which was currently in force. A total of 1,850 families had been rehoused and 760 were on waiting lists. Rehousing social groups that had their own way of life, which was sometimes incompatible with that of other groups, gave rise to difficulties; if in some cases it had been necessary to provide special housing, it was in order to respect those differences and not in a spirit of discrimination. The rehousing programme was accompanied by a social support programme to prevent any discrimination or rejection either by the "host" population or by the beneficiaries.

12. The elimination of shanty towns (chabolismo) also posed problems, on account of its legal aspects. All Spanish citizens were entitled to a roof over their head, even a temporary and illegal one. Preventing a citizen from living in a shack might be regarded as discrimination. Gypsies were certainly entitled to settle anywhere, and only a small minority of them still lived in shacks. He acknowledged that one shanty town was indeed hidden by a wall. That was because the owners of the private land on which the inhabitants of the shacks had settled had wanted to enclose their property. The shacks could only be demolished when the inhabitants could be rehoused, as required by law.

13. In reply to a question on police behaviour and training, he described the considerable progress that was apparent in both areas, especially with regard to the handling of cases involving aliens or Gypsies. None the less, in November 1995 police officers had received further instructions emphasizing the principles of objectivity, integration, and respect for rights and customs

within the provisions of the law. Where training itself was concerned, the State police college and the various training centres of the Civil Guard and the regional and local police forces taught their pupils how to deal with any form of discrimination and what they needed to know about existing minorities. The next report would contain fuller information on that topic.

14. Lastly, in reply to a question on illiteracy, he said that paragraph 13 of the report, which dealt with that subject, also contained information on school attendance. According to the 1990 figures, 2.5 per cent of the population were illiterate and 97.5 per cent could read and write properly.

15. Mr. APARICIO GOMEZ-LOBO (Spain) said he wished to dispel the doubt which had been expressed regarding the existence of a national policy to combat discrimination. There certainly was such a policy. All the parties represented in Parliament had programmes to combat discrimination and had defined the policies they intended to follow.

16. The Criminal Code had been partially amended in 1995. Justification of genocide henceforth constituted an offence and effective procedures had been laid down to prosecute the perpetrators of acts of racism, anti-Semitism and discrimination in general on grounds of race, sex, ideas, national origin or illness.

17. Where aliens were concerned, in 1991 Parliament had instructed the Executive to propose means of implementing a policy designed to reduce the causes of emigration, in particular through cooperation with the immigrants' countries of origin, control and rationalization of flows of immigrants and genuine integration of immigrants. The Government had adopted a plan for the social integration of immigrants to guarantee them a lawful and secure situation and prevent them from being exploited. New regulations for the implementation of Act No. 7/1985 had also laid the foundations for fuller integration of aliens, as the Government was convinced that the solution to problems of exclusion lay in integration. The status of permanent resident had been introduced, family reunion had been facilitated and a stable legal framework currently enabled immigrants to plan their lives. As part of that strategy, Spain had submitted to the European Union a programme of action to combat discrimination, which was shortly due to be adopted as a resolution.

18. Mrs. MARTINEZ CANO-CORTES (Spain), replying to the questions asked about the treatment of the Muslim population in Ceuta and Melilla, drew the attention of the Committee to the 1994 Aliens' Yearbook, a copy of which would be given to the secretariat and which contained some of the statistical information requested by members.

19. The number of Muslims whose historical roots lay in those two towns was approximately 14,000; the other Muslims had come from elsewhere. Her delegation wished to emphasize that the group in question was not only free from de facto discrimination, but on the contrary benefited from a special arrangement under which its members were entitled to more favourable treatment than the rest of the population. Since 1987 in the case of Melilla and 1989

in that of Ceuta, they had had an identity card which replaced the former registration card and enabled them to live in Spain without any particular requirements.

20. On 31 December 1994 there had been 408 other Muslims from North Africa in Ceuta and 654 in Melilla.

21. Mr. APARICIO GOMEZ-LOBO (Spain) described the situation of the sub-Saharan population living on the outskirts of the town of Ceuta. Part of that population, whose size varied, was in the no man's land between the Spanish and Moroccan borders; for that reason, it was beyond Spanish jurisdiction. The other part, which camped not far away on Spanish territory, was composed of persons originating from 15 or so countries in black Africa, who lived in extremely precarious conditions in an area known as "Muralla" and were gradually being transferred to the Spanish mainland. Under an emergency plan they had been able to solve their problems. Its main phases were the following: accommodation in a camp providing essential services, issue of the requisite documents, authorization to work thanks to those documents, transfer to the Spanish mainland, and finally, with the assistance of the Spanish Red Cross, assignment to centres located in various parts of Spain. In 1995 and 1996, 300 of those sub-Saharan Africans had benefited from those measures, together with a group from Melilla, whose members had been in possession of the requisite documents.

22. Mrs. MARTINEZ CANO-CORTES (Spain), replying to questions about Act No. 7/1985 relating to the rights and duties of aliens, said the delegation had been asked whether article 6 of the Act, which provided for the possibility of restrictions on freedom of movement, might not be discriminatory. She assured the Committee that that was not the case, as the restrictions in question were only required for security reasons; they applied in cases that were defined by law and were subject to procedures which the law also specified. In addition, as they concerned individuals and not groups, they were devoid of any racially discriminatory character. The provisions of the article had so far never been enforced.

23. She also reassured the Committee about the exercise by aliens of their right of association. It was indeed possible to disband an association, but only by a decision of the courts, and the Constitutional Court had clearly stated that aliens possessed the same right of association as Spanish citizens.

24. The Government's current position should be considered not on the basis of enactments that were already dated, but in the light of the new regulations implementing the Act, which were due to come into force in April 1996. Under the new regulations, Act No. 30 of 26 November 1992, relating to the juridical regime of the public authorities and administrative procedures would henceforth apply without distinction to aliens and Spanish citizens. In administrative matters, aliens would thus enjoy the same guarantees as Spaniards, except in respect of expulsion.

25. Unlike the former regulations implementing the Act, which had only contained three articles on the rights of aliens, the new regulations devoted a whole chapter to the question. As well as guaranteeing to all persons in

Spain, including those in an illegal situation, the inherent rights of the individual, such as the right to education and the right to be assisted, free of charge if necessary, by a lawyer and by an interpreter, it also extended the following rights to aliens lawfully resident in Spain: right to liberty of movement and freedom to choose one's residence; right to freedom of assembly and association; right to vote and to be elected in municipal elections (subject to reciprocity); right to hold public office that did not involve the exercise of authority; right to join trade unions and right to strike; right to education, right to set up and manage educational establishments and enterprises; right to medical care, social security and social services.

26. The regulations granted to aliens who were minors, including those in an illegal situation, the protection and guarantees provided for by the Convention on the Rights of the Child. They could not be held in internment centres for aliens unless their parents were already there and wished them to join them and the material conditions enabled family unity and privacy to be preserved. In addition, they could not be expelled. The authorities also took measures to mitigate the effects of being uprooted from their culture on children from areas of conflict.

27. The new regulations incorporated the provisions of the Schengen Agreement in respect of visas. In addition, certain requirements for entry into Spain had been relaxed. In order to be authorized to stay or reside in Spain aliens were no longer required to prove they possessed the necessary funds to meet their needs, provided they were able legally to obtain such funds once they were in Spain.

28. The new regulations also relaxed and simplified administrative procedure in respect of family reunion. They allowed a residence permit to be issued to aliens who had been living in Spain for five or six years, or even less in certain cases (e.g. refugees and stateless persons), and to be issued on humanitarian grounds (e.g. to persons from areas of conflict or to victims of racist persecution). In addition, an alien in an illegal situation who was already integrated into Spanish society could only be expelled for extremely serious reasons and the regulations of internment centres for such aliens would be amended.

29. Mr. APARICIO GOMEZ-LOBO (Spain) said that the number of racist or xenophobic acts recorded by certain NGOs was generally higher than the number provided by the General Commissariat for Aliens and Documentation because the latter only took account of acts whose perpetrators had actually been convicted by the courts under current legislation. Thus, in 1994, there had been 51 convictions for racist acts.

30. Mrs. MARTINEZ CANO-CORTES (Spain) said that Act 5/1984, on the right of asylum and refugee status, as amended by Act No. 9/1994, was not only in conformity with the provisions of the Convention relating to the Status of Refugees but went even further since it extended to refugees the right to work in Spain. Act No. 9/94 and the new regulations for its implementation (Royal Decree No. 203/1995) were actually intended to prevent fraudulent use of the system of refugee protection for purposes of economic immigration. The new legislation was in conformity with the provisions of the instruments ratified

by Spain, and in particular the Dublin Convention and the Schengen Agreement. The reason why only 345 of the 11,045 persons who had submitted an application for asylum in 1994 had been granted asylum was that most of the applications had actually been made for economic reasons. Her delegation had provided the secretariat with very detailed statistics on asylum-seekers, and in particular their nationality.

31. An alien could fill out an application for asylum at a border post, if necessary with the assistance of a lawyer and an interpreter. The competent authorities were required to rule on the admissibility of the application within 72 hours. If the application was deemed admissible or if the person had not been informed of a decision within four days, he was authorized to enter Spanish territory. A document testifying to the person's status as an asylum-seeker and a temporary residence permit were issued to him. If necessary, he could avail himself of the welfare, educational and medical services. If the application was accepted on the basis of its merits, he could then reside and work in Spain under the protection of the State. Failing that, he had to leave Spanish territory by a given deadline. However, he could be authorized to remain in Spain, in particular on humanitarian grounds.

32. Mrs. VEVIA ROMERO (Spain), turning to the question of the implementation of article 4 of the Convention, said that the new Criminal Code, which would come into force in May 1996, classified as offences acts of racism, xenophobia, anti-Semitism and genocide, and also incitement to and provocation of such acts. In the case of genocide, the Criminal Code made the offence totally imprescriptible. In addition, the new Criminal Code outlawed organizations which incited discrimination, hatred or violence against individuals, groups or associations for reasons of religion or race and empowered the courts to disband racist organizations by a substantiated decision.

33. In reply to the questions asked by the Committee regarding articles 14, 22 and 8 of the Convention, she said that there was nothing to prevent Spain, in the near future, from making the declaration provided for in article 14, removing the reservation it had made in connection with article 22 and approving the amendment to article 8.

34. Mr. GONZALES DE LINARES PALOU (Spain) commended Mr. Ferrero Costa, Country Rapporteur, for his assessment of Spain's report, which demonstrated his thorough knowledge of Spain's political, social, economic and cultural reality and facilitated the dialogue with the Committee.

35. In reply to an allegation that the Spanish Constitution was discriminatory towards aliens, he said that in a general fashion article 13 of the Constitution set out the rights of aliens and article 14 the principle of equality before the law of Spaniards. Certain fundamental rights and duties did not apply to aliens. For example, in conformity with provisions that were subject to the principle of reciprocity, aliens living in Spain were not taxable if they already paid taxes in their own country. Under a number of agreements entered into with countries with which Spain maintained cultural relations, aliens were entitled to obtain Spanish nationality without losing their original nationality. Article 19 should by no means be viewed as

discriminatory towards aliens. Aliens were entitled to choose their place of residence and to travel freely in Spain. Nevertheless, certain restrictions applied in exceptional cases for reasons of national security, for example, for the purchase of land located near military facilities. Although he was not a specialist in constitutional law, there were detailed studies of the rights guaranteed to aliens and, in his view, the Spanish Constitution was rather progressive.

36. In reply to a question by Mr. Yutzis on the role played by the consul in issuing visas in connection with family reunion, he said that consuls performed the functions of administrative agents. Consequently, they ascertained that the applicant and the person already living on Spanish territory met the minimum legal requirements and sent the appropriate documents to Madrid, where the visa to allow family reunion was issued on the express authority of the central administration.

37. Regarding article 22 of the Convention, he pointed out that in 1990 Spain had deposited the unilateral declaration recognizing the competence of the International Court of Justice, and that the Ministry of Foreign Affairs favoured the withdrawal of the reservation made in respect of that article. He assured the members of the Committee that he would again intercede with the Government of Spain to request it to withdraw its reservation. He also hoped that Spain would shortly be in a position to ratify the amendment to article 8, paragraph 6, of the Convention, which had been adopted at the 14th Meeting of States Parties. The sluggishness of that procedure was solely attributable to bureaucratic reasons.

38. In reply to the question by Mr. de Gouttes on the number of Bosnians in Spain, he said that in December 1994 there had been 1,626 displaced persons from Bosnia and Herzegovina and 600 Bosnian prisoners of war from detention camps who had been granted refugee status, i.e. a total of about 2,230 Bosnian citizens. In the same month, the number of persons from the former Yugoslavia registered in Spain had been 1,216. However, those figures fluctuated constantly on account of the conflict.

39. Regarding the training of members of the police forces, he said that Spain was one of only two European countries, the other being Finland, where there was a police college responsible for training policemen in the principles of international humanitarian law. Policemen from other countries came to Spain to receive training in order to participate in peace-keeping and electoral assistance operations monitored by the United Nations. The training had made it possible to develop a new spirit among the members of the various State police forces.

40. Finally, in reply to Mr. Ahmadu's question about Spain's policy on the issuing of visas, he explained that since the Schengen Agreement had come into force, the procedure for issuing visas was much longer as all the member countries of the European Union must first be consulted. On the other hand, a visa issued in Spain was valid throughout the territory covered by the Schengen regime. However, he hoped that progress with data processing would enable the procedure to be speeded up.

41. Mrs. VEVIA ROMERO (Spain) thanked the members of the Committee for the attention with which they had listened to Spain's replies. She would provide the Committee with written replies to the questions on action to combat the employment of foreign labour and on the complaints lodged with the Defender of the People. In addition, her delegation would take the necessary steps to ensure that the Government gave Spain's periodic report the desired publicity.

42. The CHAIRMAN invited members of the Committee who wished to do so to make their observations on the replies provided by the Spanish delegation.

43. Mr. DIACONU said he regretted that the considerable volume of information provided by the Spanish delegation concerned questions which as a rule did not come within the scope of the Convention. In his view, the question of the treatment of aliens only came under the Convention when discrimination was practised between aliens of different nationalities. He hoped that the next report would contain information on measures which the Government of Spain planned to take to ensure that Castilians were able to study in their own language in Catalonia and the Basque Country. He asked whether the 14,000 Muslims in Ceuta and Melilla were considered to be fully-fledged Spanish citizens and, if so, why special identity cards were issued to them. He would also appreciate further information on the situation of minorities in each Autonomous Community, for example, on the situation of Castilians in Catalonia. He requested further details of the measures taken in respect of associations that encouraged racist behaviour. He was uncertain whether they were banned or clandestine. In conclusion, he observed that the system brought into being by the European Union might prove increasingly discriminatory with respect to nationals of other countries.

44. Mr. YUTZIS thanked the Spanish delegation for the wealth of information it had provided on matters which, in his view, all came within the competence of the Committee. He asked what the rate of illiteracy was among Gypsies and whether a distinction was made between "illiterates" and "semi-illiterates". On another statistical point, he asked why dropping out of school was assimilated to truancy.

45. Mr. FERRERO COSTA (Country Rapporteur) thanked the Spanish delegation for having replied in such detail to the questions of the members of the Committee. Unlike Mr. Diaconu, he did not believe that questions on the rights of aliens were beyond the competence of the Committee. Acts of racial discrimination against aliens were increasingly common in Europe and were a source of concern to members of the Committee.

46. For his part, he would appreciate more details on the demographic composition of Spain's population, on the implementation of article 4 of the Convention in the light of the new Spanish Criminal Code, on the policy pursued by the Government of Spain towards unlawful associations and on the implementation of article 5 of the Convention.

47. He suggested that Spain's next periodic report should be submitted in 1998 rather than 1996 as initially scheduled. To conclude, he commended

the Spanish delegation for its intercession with the Government to induce it to recognize the competence of the Committee in conformity with article 14 of the Convention and to withdraw its reservations on article 22.

48. The CHAIRMAN said that the Committee fully appreciated the considerable work required to prepare periodic reports and was duly grateful to the Government of Spain for its efforts. He expressed the hope that the Committee would be able to continue its fruitful dialogue with the Spanish delegation in 1998. The Committee had thus concluded the first part of its consideration of the periodic report of Spain.

49. The delegation of Spain withdrew.

The meeting rose at 1 p.m.